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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TRADING TECHNOLOGIES
INTERNATIONAL, INC.,

Plaintiff,

vs.


eSPEED, INC., eSPEED, INTERNATIONAL,
LTD., and ECCO WARE, LTD.,

Defendants.

No. 04 C 5312

MEMORANDUM OPINION AND ORDER

In preparation for its trial against eSpeed, Inc., eSpeed International, Ltd., Ecco LLC, and EccoWare Ltd., (collectively "eSpeed"), plaintiff Trading Technologies International, Inc. ("TT") renews its motion to strike eSpeed's motion for summary judgment of invalidity based on alleged prior sale and to preclude eSpeed from offering the defense at trial. Originally presented during this court's absence, Judge Shadur granted TT's motion to strike pending review by this court. Upon our return, we affirmed Judge Shadur's ruling, determining that it was too late for eSpeed to file another motion for summary judgment on a previously undisclosed defense. The sole remaining issue is TT's request that we preclude eSpeed from raising the new defense – invalidity based on prior sale – to the jury during trial. We decline to do so – eSpeed may present its full arsenal of defenses to the jury. If, as TT contends, the defense has no merit, the jury will so conclude. TT's motion to preclude eSpeed from presenting a prior sale defense at trial is denied.


JAMES B. MORAN
Senior Judge, U. S. District Court

Aug. 27, 2007.